

Divorce in Guam – Another Option?

By Rudy Wartella

Some of my clients are seeking advice on where they can obtain a divorce or separation. They have questions such as can they get divorced In Japan or do they have to return to the United States. Normally, jurisdiction in a divorce case is exercised by a state court in the state where one of the parties resides in the United States or here in Japan by the Japanese Family Court. Another option that not many people know about is getting an uncontested divorce in Guam if they meet the criteria below.

Since Guam is a U.S. Territory, a Guam divorce decree will be in English and the divorce is recognized throughout the United States. Japanese divorces can also be recognized in the United States, however, Japanese divorce decrees may be harder to enforce, especially child custody, child support, and visitation provisions (if the Japanese divorce even addresses these issues). Also the Defense Finance and Accounting Service (DFAS) will not recognize a division of a military pension ordered by a Japanese court (or any foreign court). Since Guam is a U.S. territory, their orders, if properly done, will be honored by DFAS¹.

There are law firms in Guam that can help you obtain a valid divorce, but you and your spouse will need to consent in writing to the divorce. To divorce in Guam, either you or your spouse must visit Guam for seven days (six nights). Some law firms in Guam help with travel arrangements and accommodations for this required seven day stay.

It is important that you speak with an attorney to assist you with your Guam divorce. It is important that you fully understand the process and that the attorney fully understand your marital situation. This conference can be done over the phone, and occasionally by email.

Most divorces on Guam are granted on the grounds of "irreconcilable difference". As a practical matter, this is a "no fault" divorce. The court will grant the divorce based on the parties' agreement that the marriage should end.

Your spouse must sign a "consent to divorce and jurisdiction" form. Your Guam attorney will prepare this form, and give you information on where to send it. This form must be notarized. Notaries are available on a Walk-in basis at any of the legal assistance offices on Okinawa and also at the US consulate in Naha.

It is your responsibility to ensure that your spouse's consent is returned to your Guam attorney.

A final decree of divorce can be obtained within 2 to 3 weeks of the filing. When there is a need, the court can be asked to give immediate consideration to

the divorce and it can often be finalized within a few days of your stay. You may return home to wait for the court to grant your divorce (remember, one of you must spend six nights in Guam).

You should obtain certified copies of the signed decree as soon as they are received from the court - usually within 1 or 2 days of the hearing. Keep in mind that a divorce is a legal proceeding before the court of Guam. The final decision will be up to the judge that is assigned to your case. Attorneys are not permitted to guarantee the outcome of any court proceeding. For more information on getting divorced in Guam, you may call the Torii Station legal assistance office at 644-4332. September, 2009.

ⁱ From DFAS FAQ web site (<http://www.dfas.mil/militarypay/garnishment/fs-qa.html>) **Can I use an order from a court of a foreign country to collect my payments pursuant to the Uniformed Services Former Spouses' Protection Act (USFSPA)?**

No. We can honor orders issued by courts as defined in the USFSPA. The USFSPA defines "court" as "any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands." If your order was not issued by a court located in one of those named geographical areas, you should consult a private attorney for guidance regarding registering foreign court orders and whether such action will meet the requirements of the USFSPA.

You should be aware that unless all of the other requirements of the USFSPA were met by the original order, we would not be able to honor the request for payments under the USFSPA even after it is registered in a court located in an approved geographical area. Thus, the mere fact of registering a court order will not act as a means to correct Title 10, United States Code, Section 1408 deficiencies in the original court order.